MONTANA LEGISLATIVE HISTORY

Chapter 338 19 83

Bill H _____ S 432 Original bill & history ✓ C

H. Committee on Business & Industry		S. Committee on Business & Industry	
Hearing Date(s) Mar 05	✓ C	Hearing Date(s) Feb 18	✓ C
Mar 10	✓ C	_____	C
_____	C	_____	C
_____	C	_____	C
Date Out Mar 10	✓ C	Feb 18	✓ C

Did this bill originate in an interim committee? ____Yes ____No

Committee _____ Report _____

TRANSMITTED TO GOVERNOR: 03/21/83
SIGNED: 3/25/83, CHAPTER 232

SB 431 -- CRIPPEN, TOWE, REGAN, ET AL. -- TO PHASE OUT THE LIQUOR QUOTA SYSTEM TO IMPLEMENT RECOMMENDATIONS OF THE GOVERNOR'S MANAGEMENT COUNCIL; ... AND PROVIDING EFFECTIVE AND TERMINATION DATES.

INTRODUCED: 02/16/83
REFERRED TO COMMITTEE ON TAXATION: 02/16/83
HEARING: 2/19/83
REPORT: 02/19/83, DO PASS, AS AMENDED
2ND READING: 02/22/83 AYES: 19; NAYS: 28, FAILED
ON MOTION, 2/22/83, THAT THE BILL BE INDEFINITELY POSTPONED. MOTION PASSED BY THE FOLLOWING VOTE: AYES: 31; NAYS: 18.
BILL KILLED

SB 432 -- E. SMITH, KOLSTAD, LEE, ET AL. -- REQUIRING WHOLESALERS, MANUFACTURERS, AND DISTRIBUTORS OF FARM IMPLEMENTS, INDUSTRIAL AND CONSTRUCTION EQUIPMENT, AND VEHICLES TO REPURCHASE SUCH ITEMS FROM RETAIL DEALERS UPON CANCELLATION OF DEALERSHIP CONTRACTS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

INTRODUCED: 02/16/83
REFERRED TO COMMITTEE ON BUSINESS & INDUSTRY: 02/16/83
HEARING: 2/18/83
REPORT: 02/18/83, DO PASS
2ND READING: 02/21/83 AYES: 40; NAYS: 5
3RD READING: 02/23/83 AYES: 48; NAYS: 1

TRANSMITTED TO HOUSE: 02/23/83
REFERRED TO COMMITTEE ON BUSINESS & INDUSTRY: 02/28/83
HEARING: 3/9/83
REPORT: 03/11/83, BE CONCURRED IN, AS AMENDED
2ND READING: 03/19/83, BE CONCURRED IN AYES: 76; NAYS: 1
3RD READING: 03/21/83, BE CONCURRED IN AYES: 95; NAYS: 1

RETURNED TO SENATE WITH AMENDMENTS: 3/22/83
2ND READING: 03/23/83 AYES: 49; NAYS: 0
3RD READING: 03/24/83 AYES: 49; NAYS: 0

TRANSMITTED TO GOVERNOR: 03/30/83
SIGNED: 4/2/83, CHAPTER 338

SB 433 -- BOB BROWN -- SPECIFYING WHICH PROPERTY OF A JUDGMENT DEBTOR IS EXEMPT FROM EXECUTION OF A CIVIL JUDGMENT ....

INTRODUCED: 02/16/83
REFERRED TO COMMITTEE ON JUDICIARY: 02/16/83
HEARING: 2/17/83
DIED IN COMMITTEE

SB 434 -- TOWE, MANNING, GRAHAM -- ALLOCATING 15 PERCENT OF THE COAL SEVERANCE TAX TO THE RECONSTRUCTION OF HIGHWAYS; ... AND PROVIDING A DELAYED EFFECTIVE DATE.

INTRODUCED: 02/16/83
REFERRED TO COMMITTEE ON TAXATION: 02/16/83
HEARING: 2/18/83
DIED IN COMMITTEE

SENATE BILL NO. 432

INTRODUCED BY E. SMITH, KOLSTAD,
LEE, GAGE, THOMAS, CONOVER,
STEPHENS, OCHSNER

IN THE SENATE

February 16, 1983	Introduced and referred to Committee on Business and Industry.
February 18, 1983	Committee recommend bill do pass. Report adopted.
February 19, 1983	Bill printed and placed on members' desks.
February 21, 1983	Second reading, do pass.
February 22, 1983	Correctly engrossed.
February 23, 1983	Third reading, passed. Ayes, 48; Noes, 1. Transmitted to House.

IN THE HOUSE

February 28, 1983	Introduced and referred to Committee on Business and Industry.
March 11, 1983	Committee recommend bill be concurred in as amended. Report adopted.
March 19, 1983	Second reading, concurred in.
March 21, 1983	Third reading, concurred in.

IN THE SENATE

March 22, 1983	Returned to Senate with amendments.
March 23, 1983	Second reading, amendments concurred in.
March 24, 1983	Third reading, amendments concurred in. Ayes, 49; Noes, 0.
	Sent to enrolling.
	Reported correctly enrolled.

Senate BILL NO. 432

INTRODUCED BY E. Smith Holstad Lee Dage J Koons
Conover Stephens Eskanner

A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING WHOLESALERS, MANUFACTURERS, AND DISTRIBUTORS OF FARM IMPLEMENTS, INDUSTRIAL AND CONSTRUCTION EQUIPMENT, AND VEHICLES TO REPURCHASE SUCH ITEMS FROM RETAIL DEALERS UPON CANCELLATION OF DEALERSHIP CONTRACTS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Definitions. As used in [this act], the following definitions apply:

(1) "Current net price" means the price listed in the wholesaler's, manufacturer's, or distributor's price list or catalog in effect at the time a dealership contract is discontinued or, if none is then in effect, the last available price so listed.

(2) "Inventory" means:

(a) farm implements, machinery, attachments, and repair parts;

(b) industrial and construction equipment and repair parts; and

(c) automobiles, trucks, and repair parts.

(3) "Net cost" means the price actually paid for an inventory item by the retailer to the wholesaler, manufacturer, or distributor, plus applicable freight costs paid by or charged to the retailer.

(4) "Retailer" or "retail dealer" means any individual, partnership, association, or corporation engaged in the business of selling inventory, as defined in this section, to the general public.

Section 2. Repurchase of inventory items upon cancellation of dealership contract. (1) If a retailer enters into a written contract evidenced by franchise agreement, sales agreement, security agreement, or other similar agreement or arrangement and either the wholesaler, manufacturer, distributor, or retailer cancels the contract, such wholesaler, manufacturer, or distributor shall, at the retailer's request, pay to the retailer, or credit to the retailer's account if the retailer has outstanding any sums owing the wholesaler, manufacturer, or distributor, an amount equal to:

(a) 100% of the net cost of all new, unused, undamaged, and complete inventory items, except repair parts, held by the dealer at the time of cancellation; and

(b) 95% of the current net price of each repair part held by the dealer at the time of cancellation.

(2) Payment or allowance of credit to the retailer's account of the sum required in subsection (1) must be made

SB 432

upon return of the inventory items to the wholesaler, manufacturer, or distributor. Title to such inventory items passes to the wholesaler, manufacturer, or distributor upon making such payment.

Section 3. Excepted inventory. The following inventory is not subject to the repurchase requirements of [section 2]:

(1) any repair part that has a limited storage life or is otherwise subject to deterioration, such as rubber items, gaskets, or wet-charge batteries;

(2) any repair part that is in a broken or damaged package;

(3) any single repair part that is priced as a set of two or more items;

(4) any repair part that because of its condition is not resaleable as a new part without repackaging or reconditioning;

(5) any inventory for which the retailer is unable to furnish evidence satisfactory to the wholesaler, manufacturer, or distributor of title, free and clear of all claims, liens, and encumbrances;

(6) any inventory the retailer desires to keep, if he has a contractual right to do so;

(7) any inventory item other than a repair part that is not in essentially new, unused, undamaged, and complete

condition;

(8) any repair part that is not in new, unused, or undamaged condition;

(9) any inventory item, other than a repair part, that has been stocked for 36 months or more prior to notice of termination of the contract;

(10) any inventory that was ordered by the retailer after the date of notification of termination of the contract; and

(11) any inventory that was acquired from any source other than the wholesaler, manufacturer, or distributor.

Section 4. Repurchase of inventory of deceased retailer. If the retailer or majority stockholder in a corporation operating as a retailer entitled to payment under [this act] dies, the wholesaler, manufacturer, or distributor shall, unless the heirs or devisees of the deceased agree to continue to operate the dealership, repurchase the inventory from the heirs or devisees in the manner prescribed in [section 2].

Section 5. Rights not affected. (1) [This act] does not affect any contractual right of a wholesaler, manufacturer, or distributor to charge back to the retailer's account any amount previously credited or paid as a discount incident to the retailer's purchase of the goods.

(2) [This act] does not affect any security interest

that any financial institution, person, wholesaler, manufacturer, or distributor may have in the inventory of the retailer.

Section 6. Civil liability. If any wholesaler, manufacturer, or distributor fails or refuses to repurchase any inventory as required by [section 2], the wholesaler, manufacturer, or distributor is liable in a civil action for 100% of the current net price of the inventory, plus any freight charges paid by the retailer, the retailer's attorney fees, and court costs.

Section 7. Remedy as supplemental. The provisions of [this act] are supplemental to any agreement between the retailer and wholesaler, manufacturer, or distributor governing the inventory. The retailer may elect to pursue either his contract remedies or the remedy provided in [section 2]. An election to pursue his contract remedies does not bar the retailer's right to the remedy provided in [section 2] as to any inventory not covered by contract.

Section 8. Severability. If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 9. Effective date. This act is effective on

passage and approval.

-End-

48th LEGISLATIVE SESSION

COMMITTEE ON BUSINESS AND INDUSTRY

SENATE BILL NO.	ENTERED COMM.	DATE CONSIDERED	OUT OF COMM.	DO PASS DATE	DO NOT PASS DATE	DO PASS AS AMEND. DATE	BE CONCURRED IN DATE	BE CONC. IN AS AMENDED DATE	BE NOT CONCURRED IN DATE
SB 432	2-16-83	2-18-83	2-18-83	2-18-83					
SB 436	2-17-83	2-19-83	2-19-83			2-19-83			
SB 439	2-16-83		2-16-83	S E N T T O		P U B L I C H E A	L T H		
SB 453	2-16-83	2-17-83	2-17-83	2-17-83					
SB 456	2-16-83	2-18-83	2-18-83			2-18-83			
SB 460	2-18-83	2-19-83	2-19-83	T A B	L E D				

Use a separate sheet for Senate, House Bills, and Resolutions.

MINUTES OF THE MEETING
BUSINESS AND INDUSTRY COMMITTEE
MONTANA STATE SENATE

February 18, 1983

The meeting of the Business and Industry Committee was called to order by Chairman Allen Kolstad on February 18, 1983, at 10:00 a.m., in Room 404, State Capitol.

ROLL CALL: All members of the Committee were present.

CONSIDERATION OF SENATE BILL 420: An act revising the Montana electronic funds transfer act to eliminate cost restrictions and to allow sharing of off-premises automated teller machines within the state.

Senator Bill Thomas stated on page 2, they deleted chargebacks and on page 3 is another provision with the company that owns the banks and licenses. I think the independent and large corporation banks agree with this bill.

PROPONENTS TO SENATE BILL 420: George Leland, First Bank Western, stated he supports this bill. He believes this represents the removal of restraints on marketing, grants services and provides an excellent way for the customer to get service at a lesser cost to them as well as the institutions involved. The MBA has worked diligently and asked that they be considered in good order.

Jerry Jones, First Bank, Bozeman, stated he supports Senate Bill 420. The purpose of the fast banks is the convenience for customers. Upon attending MSU he added an account for the purpose of convenience. The only thing that he could carry out was withdrawals, no other transactions could be done.

John Scully, Montana Independent Bankers, stated under the leadership of MDA they got together to discuss the EFT proposal. They worked on a statewide electronic funds network with the plastic card system and it may become reality around July for use.

Gretchen Tea, Montana Bankers Association, stated they support this bill.

Rich Schirber, First Bank, Great Falls, stated our banks support the amendment to the Montana Bank Law. Our customers will generate 1/4 million in transactions. We have been asked by our customers for improvements to use their cards in machines located out of town. We feel the improvements to customer services will be as a result of the amendment to the bill.

There were no further proponents and no opponents.

QUESTIONS FROM THE COMMITTEE: Senator Goodover asked if you have one card and it can be used in any of the facilities no matter who owns the banks are they all tied into the same computer? George Leland stated depends on what network. There are more than one network available. If a bank signs up with one network and he files each day when a customer comes up to the machine they can verify the balance before they pay out.

SENATE

ments to SENATE BILL 423 BE ADOPTED.

Senator Dover made the motion that Senate Bill 423 As Amended Do Pass. Senator Goodover seconded the motion.

The Committee voted unanimously, by voice vote, that SENATE BILL 423 AS AMENDED DO PASS.

CONSIDERATION OF SENATE BILL 432: An act requiring wholesalers, manufacturers, and distributors of farm implements, industrial and construction equipment, and vehicles to repurchase such items from retail dealers upon cancellation of dealership contracts; and providing an immediate effective date.

Senator Ed Smith stated this is just a simple bill. If a company decides to close up and cancel a dealership it must purchase back the inventory. He told about an individual who had a John Deere dealership. The company had been trying to close some of the smaller dealerships. They cancelled this individual and left him sitting with a lot of inventory.

PROPONENTS TO SENATE BILL 432: Blake Wordal, Montana Hardware and Implement Association, stated they strongly support this bill. His written testimony is attached to the bill. (Exhibit No. 5)

Jerry Raunig, Montana Auto Dealers Association, stated they support this bill because the auto and truck dealers are included in the bill and some are also farm dealers.

There were no further proponents and no opponents.

QUESTIONS FROM THE COMMITTEE: Senator Fuller stated I appreciate what you are saying here. Can we force someone to do this even though the contract does not say it? Mr. Raunig stated yes.

Senator Gage asked is this bill materially different than the bill you opposed previously? Mr. Wordal stated it is more detailed than the other bill and that is why it is more acceptable.

Senator Boylan asked would this depress other manufacturers wanting to come into the State of Montana? Mr. Wordal stated the manufacturer representatives basically do not support this legislation but are not opposed either.

ACTION ON SENATE BILL 432: Senator Dover made the motion that Senate Bill 432 Do Pass. Senator Goodover seconded the motion.

The Committee voted unanimously, by voice vote, that SENATE BILL 432 DO PASS.

ACTION ON SENATE BILL 323: Senator Lee stated he has received a letter from Senator Tom Hager asking that we Table this bill.

Senator Lee made the motion that Senate Bill 323 Be Tabled. Senator Dover seconded the motion.

STANDING COMMITTEE REPORT

February 18 19 83

MR. PRESIDENT

We, your committee on BUSINESS AND INDUSTRY

having had under consideration SENATE Bill No. 432

Respectfully report as follows: That SENATE Bill No. 432

DO PASS

ALLEN C. KOLSTAD, Chairman.

STATE PUB. CO.
Helena, Mont.

11 4

SUBMITTED BY: Blake Wordal
2/18/83
EXHIBIT NO. 5

MONTANA
HARDWARE &
IMPLEMENT
ASSOCIATION

3087 N. Montana A
P.O. Box 4459
Telephone 406/442-
Helena, Montana 59

the advocate for Montana and Northern Wyoming retail hardware and farm implement dealers

TESTIMONY ON SENATE BILL 432

Mr. Chairman and members of the Senate Business and Industry Committee, I am Blake Wordal, the managing director of the Montana Hardware and Implement Association. Our association represents retail hardware and farm implement dealers in Montana and northern Wyoming.

We strongly support Senate Bill 432. This legislation is protective legislation for our dealers when a franchise is cancelled and has been adopted in 20 other states. Similar legislation was introduced in the last session of the Montana Legislature and passed the House without a dissenting vote. It was defeated, however, in a Senate Committee because our association opposed the bill as too general and too vague. At that time, we pledged to return with legislation based on the law in Minnesota. The bill you have before you is modeled after the Minnesota statutes and has been unanimously endorsed by my Board of Directors and the general membership at our 1982 convention.

When this type of legislation was first considered in other states, the battles between retailers, wholesalers, distributors and manufacturers were hard fought. After several of these fights, retailers and manufacturers decided that the best avenue to resolve their problems was to compromise. The Minnesota law was the result and has been used as a model in most other states.

This bill clearly states what wholegoods and parts will be bought back by the wholesaler, manufacturer or distributor; the amounts to be reimbursed; how the transaction shall take place; and provides an important section relating to the death of a dealer or major stockholder. Industrial equipment and automobiles have been included in this legislation at the request of their representatives.

The farm implement industry is one where a retailer's assets are tied into large, expensive machinery and parts. The loss of a franchise can simply bankrupt a thriving business through no fault of the dealer. He or she can be left with hundreds of thousands of dollars in inventory and no future relationship for service, parts or even updated information from the manufacturer, wholesaler or distributor. As the law now stands, the manufacturer, wholesaler and distributor have no responsibility to repurchase items bought by the retailer in good faith that their relationship would continue. He or she have very few alternatives. There are few farmers or ranchers who will buy merchandise from a farm implement dealer who is unable to service the equipment. Dealers are forced to auction what they can at significant losses and sacrifice the rest.

12

Senate Bill 432 is a very good vehicle to eliminate these inequities. I urge your favorable consideration of this legislation and will be happy to answer any questions the Committee members might have. Thank you.

ROLL CALL

BUSINESS AND INDUSTRY COMMITTEE

48th LEGISLATIVE SESSION -- 1983 DATE 2-18-83

NAME	PRESENT	ABSENT	EXCUSED
PAUL F. BOYLAN	✓		
B. F. CHRIS CHRISTIAENS	✓		
HAROLD L. DOVER	✓		
DAVID FULLER	✓		
DELWYN GAGE	✓		
PAT M. GOODOVER	✓		
GARY P. LEE, VICE CHAIRMAN	✓		
PAT REGAN	✓		
PAT M. SEVERSON	✓		
ALLEN C. KOLSTAD, CHAIRMAN	✓		

NAME: Jerry Running DATE: 2-18-83

ADDRESS: Helena

PHONE: 442-1233

REPRESENTING WHOM? Montana Auto Dealers Association

APPEARING ON WHICH PROPOSAL: SB 432

DO YOU: SUPPORT? X AMEND? _____ OPPOSE? _____

COMMENTS: _____

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

STATUS SHEET

BUSINESS & INDUSTRY COMMITTEE

48 Legislature

Bill No.	Subject Matter	Date In	Sponsor	Hearing Date	Committee Action	Date Out
SB 432	REQUIRING WHOLESALERS, MANUFAC. & DISTRIBUTORS OF FARM IMPLEMENTS & VEHICLES TO REPURCHASE UPON CANCELLATION OF CONTR.	3-1	E. SMITH	3-9	Be Concurred Amended	3-10
SB 450	ESTABLISHING A RESTAURANT ALL-BEVERAGE LIQUOR LICENSE OUTSIDE THE EXISTING QUOTA	3-1	CRIPPEN	3-9	Tabled	3-21
SB 456	ALLOWING AN ELECTRIC OR GAS UTILITY TO PURCHASE OR INVEST IN COST EFFECT. ENERGY CONSERVATION	3-1	FULLER	3-18	Be Concurred Amended	3-22
SB 84	TO PROVIDE THAT PERSONS OWNING HOUSES SHALL PAY 50% OF THE NECESSARY & REASONABLE EXPENSES TO MOVE	3-2	HAZELBAKER	3-16	BE CONCURRED Amended Reconsidered-failed	3-22 3-23
SB 206	PROVIDE EXCLUSIONS FROM A BANK'S LENDING LIMIT FOR LOANS SECURED BY CERTAIN DEPOSITS	3-2	GAGE	3-14	Be Concurred	3-14
SB 207	TO PROVIDE FOR INVESTMENT BY BANKS IN THE CAPITAL STOCK OF BANK SERVICE CORPORATIONS	3-2	GAGE	3-14	Be Concurred	3-14

Form CS-32
1-79

HOUSE BUSINESS & INDUSTRY COMMITTEE

Chairman, Rep. Jerry Metcalf, called the Business & Industry Committee to order on March 9, 1983, in Room 420 of the Capitol Building, Helena, Montana at 9:00 a.m. All members were present except Rep. Howe, Kadas and Fabrega who were excused.

SENATE BILL 432

SENATOR SMITH, District 1, sponsor, opened by saying the purpose of this bill is to provide some protection to retailers of farm equipment and vehicles if a distributor wishes to cancel a contract with that dealership. With this legislation, those distributors will have to buy back stock and equipment. We had the John Deer dealership cancelled because they felt there should only be one dealership in each county. They should, therefore, be obligated to buy the equipment back if it's in good condition. Neil Simon contacted me with amendments to propose and I have no problem with them. We did not intend to affect Western Auto, or Northern Auto Parts, or Midas Mufflers so that if they cancelled out they would be required to take that equipment back. It's possible for a distributor to unload their equipment on a dealer and then cancel them so they are stuck with everything.

PROPONENTS:

REP. JACOBSEN, District 1: This legislation was passed in the House last session and then killed in the Senate. This year we decided to try the Senate first - it passed. We are hopeful it will pass the House.

BLAKE WORDAL, Managing Director of the Montana Hardware and Implement Association: Our association opposed the bill last session because it was too general. This bill is modeled after the Minnesota statute and has been endorsed by our board. It clearly states what parts will be bought back by the distributor and provides an important section relating to the automobile dealers. Farm implements are tied to large, expensive expenditures and the loss of a franchise can simply bankrupt a thriving business through no fault of the dealer. Dealers are forced to auction what they can at significant losses and sacrifice the rest. We believe SB 432 is a good vehicle to eliminate these inequities. (Exhibit #1)

JERRY RAUNIG, Montana Automobile Dealers Association: We support this because several of our members are also farm implement dealers. Six years ago when we passed the Montana Franchise Act, we felt this was sufficiently covered but in the course of the last three years we have found some problems in that there are some catchy little phrases that get us into trouble. This is a good piece of legislation and it will help many people.

REP. WALLIN: I am a proponent of this bill. In my case, we have this in our agreement and we would have no problem with the factory. This will not benefit me in any way, but some dealers need this protection.

PONENTS:

NEIL SIMON, International Franchise Association: We represent 360 franchise companies. The proponents have no problem with my amendments. On page 1, line 10 inventory includes among other things automobiles, trucks and repair parts. My concern is with repair parts being left out there all alone. Repair shops alone may be regulated under the bill. We should add "sold by an automobile or truck dealer." We should also specify "dealership contract" instead of just contract in section 2. I urge you to amend this bill. (Exhibit #2)

SEN. SMITH, in closing, said it is not his intention to involve other kinds of dealerships in this bill and he hopes the committe will amend and concur with this bill.

QUESTIONS:

REP. FAGG: Has anyone been hurt by this in Montana? Rep. Jacobsen: The International Dealer went through extensive court action and expense. Rep. Fagg: I don't know that we should pass a law protecting a private businessman. No one protects architects or other private businessmen. We are protecting them from poor management or poor legal advice. Rep. Jacobsen: I had this experience. You have in stock inventory that the company as well as yourself will make a profit on. There should be an obligation both ways. Sen. Smith: The distributor forces stock on the dealership and tells them they must sell it. Unless he has an ironclad agreement, he's stuck.
REP. LYBECK: Mr. Raunig, is this a problem with automobile dealerships? Mr. Raunig: One problem right now is Fiatt has announced they will no longer sell in our country. They will not buy back anything. There is no place to sell the parts and stock. The manufacturer has an option to buy back the parts and sell them - the dealer does not.
REP. HARPER: In section 5 on page 4, it seems to say the act doesn't affect contractual rights and in section 7 on page 5, you see that the remedy is supplemental and the wholesalers can pursue either this remedy, his contract remedies or both. I wonder what the interplay is going to be between this and existing contracts: How many old contracts are we automatically setting a floor on with this bill? Doesn't this automatically lift up to that base existing contracts?
Neil Simon: That is standard language in the 20 state laws that are in existence. Most dealers have contracts that protect them. Notice this is only on new parts. Rep. Harper: The wholesaler should have a right under that contract to expect his dealers to sell his products - you are providing a new base and saying he doesn't have to. Blake Wordal: There is a time limit. A franchise agreement is a valuable thing to have and no one cancels them for no reason. This gives an option.

SENATE BILL 420

SEN. THOMAS, District 20, sponsor, opened by saying this bill revises the Electronic Funds Transfer Act by eliminating the

ceiling on charges of 125% of the average transaction cost but allowing a reasonable return on the owner's equity, and by requiring that any financial institution be allowed to use any automated teller machine, allowing many smaller banks into the program. The banks have all agreed on this bill and we hope you will look favorably on it.

PROPONENTS:

GARY GIBSON, First Bank, Helena: We stand in support of this bill.

JOHN CADBY, Montana Banker's Association: This removes the price ceiling and allows the free market to fix it, and it allows automated teller machines by bank customers whether they're customers of a system bank or an independent bank. All the banks in Montana support this bill.

STEVE BROWN, Independent Bankers: We are in support of this legislation.

OPPONENTS: none

QUESTIONS:

REP. METCALF: Any bank can use these machines under this law?
Sen. Thomas: They can enter into an agreement.

EXECUTIVE SESSION:

SENATE BILL 420

REP. HARPER: I move SENATE BILL 420 BE CONCURRED IN.
QUESTION: The motion carried unanimously.

SENATE BILL 432

REP. KITSELMAN: I move SENATE BILL 432 be amended by those presented today.
QUESTION: Motion carried unanimously.

REP. KITSELMAN: I move SENATE BILL 432 BE CONCURRED IN AS AMENDED.
REP. FAGG: I have some problems with this bill because it's so broad. To let anyone cancel and make the wholesaler responsible is too much...it goes too far.
REP. WALLIN: I agree with the point Rep. Harper brought up. In my particular case, anything that is in the price book is returnable. If a car is old, the factory might have to go out and have a jobber make that particular part and they should not have to take back those parts. They cannot sell it to someone else. I would like to include that particular protection to the wholesaler.
REP. FAGG: I would like to amend it on line 13 by striking the word "retailer" and on page 4, section 4 strike the entire thing.

REP. METCALF: We will defer action on this bill until tomorrow when some amendments can be worked out. Rep. Wallin will do this.

The hearing adjourned at 10:00 a.m.

J. Metcalf

REP. JERRY METCALF, CHAIRMAN

Linda Palmer

Linda Palmer, Secretary

Exhibit #1

MONTANA
HARDWARE &
IMPLEMENT
ASSOCIATION

3087 N. Montana Av
P.O. Box 4459
Telephone 406/442-
Helena, Montana 59

the advocate for Montana and Northern Wyoming retail hardware and farm implement dealers

TESTIMONY ON SENATE BILL 432

Mr. Chairman and members of the House Business and Industry Committee, I am Blake Wordal, the managing director of the Montana Hardware and Implement Association. Our association represents retail hardware and farm implement dealers in Montana and northern Wyoming.

We strongly support Senate Bill 432. This legislation is protective legislation for our dealers when a franchise is cancelled and has been adopted in 20 other states. Similiar legislation was introduced in the last session of the Montana Legislature and passed the House with little dissent. It was defeated, however, in a Senate Committee because our association opposed the bill as too general and too vague. At that time, we pledged to return with legislation based on the law in Minnesota. The bill you have before you is modeled after the Minnesota statutes and has been unanimously endorsed by my Board of Directors and the general membership at our 1982 convention.

When this type of legislation was first considered in other states, the battles between retailers, wholesalers, distributors and manufacturers were hard fought. After several of these fights, retailers and manufacturers decided that the best avenue to resolve their problems was to compromise. The Minnesota law was the result and has been used as a model in most other states.

This bill clearly states what wholegoods and parts will be bought back by the wholesaler, manufacturer or distributor; the amounts to be reimbursed; how the transaction shall take place; and provides an important section relating to the death of a dealer or major stockholder. Industrial equipment and automobiles have been included in this legislation at the request of their representatives.

The farm implement industry is one where a retailer's assets are tied into large, expensive machinery and parts. The loss of a franchise can simply bankrupt a thriving business through no fault of the dealer. He or she can be left with hundreds of thousands of dollars in inventory and no future relationship for service, parts or even updated information from the manufacturer, wholesaler or distributor. As the law now stands, the manufacturer, wholesaler and distributor have no responsibility to repurchase items bought by the retailer in good faith that their relationship would continue. He or she have very few alternatives. There are few farmers or ranchers who will buy merchandise from a farm implement dealer who is unable to service the equipment. Dealers are forced to auction what they can at significant losses and sacrifice the rest.

Senate Bill 432 is a very good vehicle to eliminate these inequities. I urge your favorable consideration of this legislation and will be happy to answer any questions the Committee members might have. Thank you.

Exhibit #2

STATEMENT OF NEIL SIMON ON BEHALF OF THE INTERNATIONAL FRANCHISE ASSOCIATION BEFORE THE BUSINESS AND INDUSTRY COMMITTEE ON S.B. 432
MARCH 9, 1983

Good morning Mr. Chairman and members of the committee. My name is Neil Simon, I represent the International Franchise Association, a Washington D.C. based organization representing approximately 360 franchising companies throughout the United States. Many of our members do business in Montana, and others intend to do so in the future.

More than 1,800 companies, representing over 40 industries use the franchise method to distribute their goods and services. Most are small businesses, in fact, 65% of all franchisors have fewer than 50 units. The strength of this system is evident in a rate of success for franchising which is estimated to be two to five times greater than that of other small businesses.

The source of the International Franchise Association's concern about S.B. 432 revolves around the over 35,000 franchised establishments dealing in automobile products and services, many of whom are represented by IFA. I'm not here talking about automobile dealers, but about companies such as Western Auto, AAMCO Transmissions, Midas Mufflers and Ziebart to name but a few.

Despite the fact that these companies do not, I repeat do not,

deal in farm implements or equipment, they fall under the ambit of the legislation because of the broad definition of the term "inventory".

As defined by section 1(2) (c) of the bill, inventory includes "automobiles, trucks and repair parts." As a consequence of this definition, franchisors involved in automobile repair and auto parts sales may be required to repurchase their franchisee's inventory in the event that the franchise agreement is terminated.

Without passing judgement on the application of the legislation on manufacturers, wholesalers and distributors of farm and industrial equipment, I can state that it would be inappropriate and ill advised to include franchisors under the coverage of this bill. Indeed, I am not certain that it is your intent to further regulate these franchises at all.

Unlike farm implement and equipment dealers, franchising is regulated under the Federal Trade Commission Rule on Franchising. It requires full disclosure of all relevant information to the prospective franchisee before the contract is executed. Among the disclosures that must be made are what inventory must be carried, and what happens upon termination.

Franchising companies have different procedures regarding

repurchase of inventory. Some franchise agreements include provisions regarding repurchase, others do not. Thus, if repurchase is important to the prospective franchisees he is given all the information necessary to make an informed choice among the different franchisors.

Moreover, franchisors do not simply pass on finished products to be distributed by franchisees. Indeed, under our nation's antitrust laws, franchisees can not be required to buy products from franchisors. In most instances, the franchisor establishes manufacturing and assembly specifications for the products sold or used by franchisees. The franchisee then has the option to purchase the necessary inventory from either the franchisor or outside suppliers.

Because of this arrangement, most franchisors have a limited capability to distribute repurchased inventory to other dealers. Because of the shipping and storage costs involved, it would be very expensive, and highly uneconomical, for a franchisor to repurchase a few odd lots of inventory.

I would also like to point out that the problem to which this legislation is addressed, dealership terminations, occurs extremely infrequently among franchises. According to the U.S. Department of Commerce Survey "Franchising in the Economy, 1981 - 1983", there were 366,513 franchisee owned outlets operating in 1981. Of these, only 7,181, or 2 per cent, were terminated. A majority of those contracts

terminated -- 57% -- was at the initiative of the franchisee or by mutual consent. Of the over 35,000 establishments dealing in automobile products and services, there were only 1,287 terminations. Again, 66 per cent of these were at the initiative of the franchisee or by mutual consent.

A franchise is a business venture. Both parties enter into the arrangement with the expectation of profit and an understanding of the risk of failure based on the full disclosure made under the FTC Rule. Although the International Franchise Association strongly supports the federal disclosure law, we oppose efforts interfering with the contractually established relationship between the franchisor and franchisee.

Senate Bill 432 will add a new and uncertain factor into the successful formula of franchising. Under the bill, a franchisor would be required to repurchase the franchisee's inventory even where the franchisee unilaterally cancelled the franchise agreement. This "golden parachute" for franchisees will significantly alter the franchisor-franchisee relationship and the allocation of risks agreed upon when the franchise agreement was executed.

Franchising is an enormously successful way of doing business. New laws and regulations will not help attract new job opportunities for Montannans. I urge you to amend the bill by tightening up the

definition of inventory.

Thank you very much for giving me this opportunity to present our views.

AMENDMENTS TO S.B. 432 PROPOSED BY THE INTERNATIONAL FRANCHISE ASSOCIATION

Page 1, line 24

Amend section 1 (2)(c) to read as follows:

"(c) automobiles, trucks and repair parts SOLD BY AN AUTOMOBILE OR TRUCK DEALER AS DEFINED IN TITLE 61 OF THE MONTANA CODE."

Rationale: Amendment would make clear that the bill applies only to dealers of automobiles and trucks and not businesses that carry repair parts alone, such as Western Auto and Midas Muffler.

Page 2, line 10

Amend section 2 (1) to read as follows:

"enters into a written DEALERSHIP contract evidenced by franchise"

Rationale: As currently written, S.B. 432 covers the cancellation of all contracts, not just the cancellation of dealership contracts.

VISITOR'S REGISTER

HOUSE Bus. & Ind. COMMITTEE

BILL SB 432 DATE 3-9-83

SPONSOR

NAME	RESIDENCE	REPRESENTING	SUPPORT	P
Blake Wordal	Helena	MT HARDWARE & IMPLEMENT ASSN	X	
Neal Senia	Washington, DC	Int'l Franchise Assn		X
Jerry Ranning	Helena	Mt Auto Dealers Assn	X	
[illegible]	[illegible]	[illegible]		
Rep. Glenn Jackson	planned		X	

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR LONGER FORM.

WHEN TESTIFYING PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

FORM CS-33
1-83

HOUSE BUSINESS & INDUSTRY COMMITTEE

Chairman, Rep. Jerry Metcalf, called the Business & Industry Committee to order on March 10, 1983, in Room 420 of the Capitol Building, Helena, Montana at 9:00 a.m. All members were present except Rep. Ellison, who was excused.

SENATE BILL 117

SEN. DOVER, District 24, sponsor, opened by saying the frequency coordination between statewide users is poor. There is a need for better spectrum management in order to avoid overuse and overcrowding of frequencies, particularly since more and more users are in need of new frequencies each year. This bill authorizes the Dept. of Administration to develop a plan for land mobile public safety radio frequency utilization and to make rules to implement the plan. If properly carried out, it will, a.) expedite the issuance of licenses; b.) lessen interference to operators; c.) provide a workable statewide emergency land mobile communications system; d.) provide better communication for local government and state agencies, and e.) reduce the cost of communication. (Exhibit #1)

PROPONENTS:

CHUCK O'REILLY, Sheriff of Lewis & Clark County, representing the Montana Sheriff's and Peace Officer's Association: We agree with the bill. We feel there should be a neutral agency making the allocation of frequencies and that the Dept. of Administration is the proper agency for this. In addition to the six groups that work toward obtaining frequencies from the FCC, each individual sheriff and police chief in the state can go direct to the FCC and ask for radio licensing. The problem is we don't know what any other agency is asking for and the delays because of cross-overs are great. We need coordination. A good part of the bill is on line 17, page 2 that states the department shall obtain input from all state and local users. This will enable the department to know the problems that exist and try to alleviate them.

LARRY PETERSON, Chief of Research & Planning, Board of Crime Control: Many law enforcement agencies are unable to communicate with each other or their own units at times. A radio or land mobile communications system is essential for law enforcement and other public safety users as many of their personnel are constantly on the move or located at work sites that vary from day to day. (Exhibit #2)

BILL WARE, Chief of Police, Helena: The Montana Chiefs of Police are in support of this bill. I hope you will give a favorable do pass to this legislation.

JOHN NORRIS, Director, State Communications Division, Dept. of Administration: We are in support of this bill. This is an effort to take positive action in the area of land mobile radio communications in the state. There are a limited amount of frequencies assigned to a community so it necessary to manage their allocation.

EXECUTIVE SESSION:

SENATE BILL 117

REP. FAGG: I move SENATE BILL 117 BE CONCURRED IN.
QUESTION: The motion carried unanimously.

SENATE BILL 353

REP. FAGG: I move SENATE BILL 353 BE CONCURRED IN.
QUESTION: The motion carried unanimously.

SENATE BILL 392

REP. METCALF: We will postpone action on SB 392 until tomorrow.

SENATE BILL 389

REP. SCHULTZ: I move SENATE BILL 389 BE CONCURRED IN.
QUESTION: Motion carried unanimously.

SENATE BILL 432

REP. FAGG: There should be something in the bill so a sloppy retailer will not stick the wholesaler. Rep. Wallin: There are people who are sloppy operators. This provides an option to allow him to market and get rid of his merchandise. The people who sell the parts to a franchise dealer have a stake in that business and will advise the retailer on sales.
REP. FAGG: I am concerned about the retailer treating the wholesaler poorly. This allows the retailer to drop out at any time causing the wholesaler alot of problems.
REP. WALLIN: I move the prepared amendment on page 2, line 22.
QUESTION: Motion carried unanimously.
REP. WALLIN: I move SENATE BILL 432 BE CONCURRED IN AS AMENDED.
QUESTION: The motion carried with Rep. Fagg, Jensen and Hart voting no.

REP. KITSELMAN: I move we reconsider action on Senate Bill 353. I have a problem with car dealers and retail clothing stores all getting into the insurance business. Rice Motors will create insurance and offer it as an incentive for an automobile loan. Rep. Wallin: It's going to be available. The bill says we can set up an insurance company and we will keep the premiums inside the state instead of sending them out.
QUESTION: Motion failed.

The hearing adjourned at 10:15 a.m.

J. Metcalf
REP. JERRY METCALF, CHAIRMAN

Linda Palmer
Linda Palmer, Secretary

STANDING COMMITTEE REPORT

MARCH 10 19 83

MR. SPEAKER:

We, your committee on BUSINESS & INDUSTRY

having had under consideration SENATE Bill No. 432

third reading copy (blue color)

A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING WHOLESALERS, MANUFACTURERS, AND DISTRIBUTORS OF FARM IMPLEMENTS, INDUSTRIAL AND CONSTRUCTION EQUIPMENT, AND VEHICLES TO REPURCHASE SUCH ITEMS FROM RETAIL DEALERS UPON CANCELLATION OF DEALERSHIP CONTRACTS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

Respectfully report as follows: That SENATE Bill No. 432

BE AMENDED AS FOLLOWS:

1. Page 1, line 24
Following: "parts"
Insert: "sold by an automobile or truck dealer as defined in 61-1-314"

2. Page 2, line 10
Following: "written"
Insert: "dealership"

3. Page 2, line 22
Following: "part"
Insert: "carried on the most recent price list or catalog provided by the manufacturer or distributor and"

AND AS AMENDED
~~NEGLASS~~ BE CONCURRED IN

JERRY METCALF Chairman.

COMMITTEE SECRETARY

STATE PUB. CO.
Helena, Mont.

SENATE BILL NO. 432

INTRODUCED BY E. SMITH, KOLSTAD,

LEE, GAGE, THOMAS, CONOVER,

STEPHENS, OCHSNER

A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING WHOLESALERS, MANUFACTURERS, AND DISTRIBUTORS OF FARM IMPLEMENTS, INDUSTRIAL AND CONSTRUCTION EQUIPMENT, AND VEHICLES TO REPURCHASE SUCH ITEMS FROM RETAIL DEALERS UPON CANCELLATION OF DEALERSHIP CONTRACTS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Definitions. As used in [this act], the following definitions apply:

(1) "Current net price" means the price listed in the wholesaler's, manufacturer's, or distributor's price list or catalog in effect at the time a dealership contract is discontinued or, if none is then in effect, the last available price so listed.

(2) "Inventory" means:

(a) farm implements, machinery, attachments, and repair parts;

(b) industrial and construction equipment and repair parts; and

SB 0432/02

(c) automobiles, trucks, and repair parts SOLD BY AN AUTOMOBILE OR TRUCK DEALER AS DEFINED IN 61-1-314.

(3) "Net cost" means the price actually paid for an inventory item by the retailer to the wholesaler, manufacturer, or distributor, plus applicable freight costs paid by or charged to the retailer.

(4) "Retailer" or "retail dealer" means any individual, partnership, association, or corporation engaged in the business of selling inventory, as defined in this section, to the general public.

Section 2. Repurchase of inventory items upon cancellation of dealership contract. (1) If a retailer enters into a written DEALERSHIP contract evidenced by franchise agreement, sales agreement, security agreement, or other similar agreement or arrangement and either the wholesaler, manufacturer, distributor, or retailer cancels the contract, such wholesaler, manufacturer, or distributor shall, at the retailer's request, pay to the retailer, or credit to the retailer's account if the retailer has outstanding any sums owing the wholesaler, manufacturer, or distributor, an amount equal to:

(a) 100% of the net cost of all new, unused, undamaged, and complete inventory items, except repair parts, held by the dealer at the time of cancellation; and

(b) 85% of the current net price of each repair part

REFERENCE BILL

33

CARRIED ON THE MOST RECENT PRICE LIST OR CATALOG PROVIDED BY THE MANUFACTURER OR DISTRIBUTOR AND held by the dealer at the time of cancellation.

(2) Payment or allowance of credit to the retailer's account of the sum required in subsection (1) must be made upon return of the inventory items to the wholesaler, manufacturer, or distributor. Title to such inventory items passes to the wholesaler, manufacturer, or distributor upon making such payment.

Section 3. Excepted inventory. The following inventory is not subject to the repurchase requirements of [section 2]:

(1) any repair part that has a limited storage life or is otherwise subject to deterioration, such as rubber items, gaskets, or wet-charge batteries;

(2) any repair part that is in a broken or damaged package;

(3) any single repair part that is priced as a set of two or more items;

(4) any repair part that because of its condition is not resaleable as a new part without repackaging or reconditioning;

(5) any inventory for which the retailer is unable to furnish evidence satisfactory to the wholesaler, manufacturer, or distributor of title, free and clear of all

claims, liens, and encumbrances;

(6) any inventory the retailer desires to keep, if he has a contractual right to do so;

(7) any inventory item other than a repair part that is not in essentially new, unused, undamaged, and complete condition;

(8) any repair part that is not in new, unused, or undamaged condition;

(9) any inventory item, other than a repair part, that has been stocked for 36 months or more prior to notice of termination of the contract;

(10) any inventory that was ordered by the retailer after the date of notification of termination of the contract; and

(11) any inventory that was acquired from any source other than the wholesaler, manufacturer, or distributor.

Section 4. Repurchase of inventory of deceased retailer. If the retailer or majority stockholder in a corporation operating as a retailer entitled to payment under [this act] dies, the wholesaler, manufacturer, or distributor shall, unless the heirs or devisees of the deceased agree to continue to operate the dealership, repurchase the inventory from the heirs or devisees in the manner prescribed in [section 2].

Section 5. Rights not affected. (1) [This act] does

34

not affect any contractual right of a wholesaler, manufacturer, or distributor to charge back to the retailer's account any amount previously credited or paid as a discount incident to the retailer's purchase of the goods.

(2) [This act] does not affect any security interest that any financial institution, person, wholesaler, manufacturer, or distributor may have in the inventory of the retailer.

Section 6. Civil liability. If any wholesaler, manufacturer, or distributor fails or refuses to repurchase any inventory as required by [section 2], the wholesaler, manufacturer, or distributor is liable in a civil action for 100% of the current net price of the inventory, plus any freight charges paid by the retailer, the retailer's attorney fees, and court costs.

Section 7. Remedy as supplemental. The provisions of [this act] are supplemental to any agreement between the retailer and wholesaler, manufacturer, or distributor governing the inventory. The retailer may elect to pursue either his contract remedies or the remedy provided in [section 2]. An election to pursue his contract remedies does not bar the retailer's right to the remedy provided in [section 2] as to any inventory not covered by contract.

Section 8. Severability. If a part of this act is invalid, all valid parts that are severable from the invalid

part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 9. Effective date. This act is effective on passage and approval.

-End-

35